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STATEMENT OF JURISDICTION

On July 31, 1995, the Public Utilities Commission of South Dakota ("Commission") denied the joint application of U S WEST Communications, Inc. ("U S WEST") and the Cheyenne River Sioux Tribe Telephone Authority ("Telephone Authority") to sell and purchase respectively the Timber Lake, Morristown and McIntosh telephone exchanges. App. 1 (Timber Lake); App. 2 (Morristown); App. 3 (McIntosh).¹ U S WEST appealed those three decisions to the Circuit Court and the Telephone Authority intervened in that appeal. CR1 1-4, 104. The Circuit Court entered an order affirming in part and reversing and remanding in part the Commission's decisions denying the proposed sales. App. 4; App. 5.

U S WEST and the Telephone Authority filed a notice of appeal on May 9, 1997 with the Clerk of this Court which was

¹"SR1" refers to the settled administrative record before the Circuit Court in docket number 95-288 which was an appeal of the Commission's initial decisions, and "SR2" refers to the settled administrative record before the Circuit Court in docket number 97-348 which was an appeal of the Commission's amended decisions after remand. "CR1" refers to the Circuit Court's record in its docket number 95-288, and "CR2" refers to the Circuit Court's record in its docket number 97-348. "TLFF1," "MCFF1," "MOFF1," "TLCL1," "MCCL1" and "MOCL1" refer to the findings of fact and conclusions of law which the Commission entered in its first decisions in reference to the Timber Lake, Morristown and McIntosh exchanges, respectively, and "TLFF2," "MCFF2," "MOFF2," "TLCL2," "MCCL2" and "MOCL2" refer to the Commission's amended findings of fact and conclusions of law. "TR" refers to the transcript of the hearing held by the Commission from June 1-4, 1995. "App." refers to documents attached hereto as the Appendix. Appendix page numbers are located on the bottom right hand corner of the page.

assigned appeal No. 20062. On June 17, 1997, this Court approved a stipulation among the parties to stay the briefing schedule pending the Commission's decision on remand.

On August 22, 1997, the Commission entered amended decisions again denying the proposed sales. TLCL2 9, App. 8 at p. 93; MOCL2 9, App. 6 at p. 74; MCCL2 9, App. 7 at p. 83. U S WEST and the Telephone Authority appealed. CR2 1-2. The Circuit Court affirmed the Commission's findings of fact and conclusions of law. App. 9 at 95-96. On March 30, 1998, U S WEST and the Telephone Authority filed a timely joint notice of appeal with the Clerk. The parties have stipulated to consolidating both appeals for purposes of briefing and submission. This Court has jurisdiction over both appeals pursuant to SDCL 1-26-37.

STATEMENT OF THE ISSUES

- I. Whether the Commission had jurisdiction over the sale of the portion of the Timber Lake Exchange located on the Cheyenne River Indian Reservation.

The Commission found that it had jurisdiction and the Circuit Court affirmed.

- II. Whether the Commission's decisions denying the Telephone Authority's application to purchase the off-Reservation portion of the Timber Lake, and the Morristown and McIntosh telephone exchanges should be reversed pursuant to SDCL 1-26-36.

The Commission held that the sales did not satisfy the criteria under SDCL 49-31-59 and the Circuit Court affirmed.

III. Whether the Commission's refusal to approve the joint application regarding the telephone exchange sales based on the Commission's interpretation of SDCL 49-31-59 constitutes a denial of equal protection under the law in violation of the Fourteenth Amendment to the United States Constitution and Article VI, § 18, of the South Dakota Constitution.

The Circuit Court found that it did not.

IV. Whether the Commission and the Circuit Court abused their discretion by failing to take judicial notice of a dispute resolution mechanism adopted by the Telephone Authority and a provisional certificate of convenience and necessity issued by the Standing Rock Sioux Tribe.

The Commission and the Circuit Court did not consider this evidence.

STATEMENT OF THE CASE AND FACTS

A. STATEMENT OF THE CASE

The Telephone Authority, through its subsidiary, Owl River Telephone Inc., seeks to purchase from U S WEST three telephone exchanges. The Telephone Authority is organized under the authority of the Cheyenne River Sioux Tribe ("Tribe"). The Tribe is a federally recognized Indian tribe, with a Constitution and By-Laws approved by the Secretary of the Interior on December 27, 1935, pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461, 462, 463, 464, 465, 466-470, 471-473, 474, 475, 476-478, 479 ("IRA"). The Tribe has governmental responsibility within the boundaries of the Cheyenne River Indian Reservation. TR 777-79. The Tribe may establish any organization whose purpose or object is to benefit its members. CHEYENNE RIVER SIOUX TRIBE CONST., art. IV(p). The Telephone Authority and

its subsidiary, Owl River, are such organizations. See SR1 3273; App. 3 at p. 18; App. 2 at p. 11; App. 1 at p. 4; TR 546. The Tribe approved the Telephone Authority's purchase of the Timber Lake, Morrystown and McIntosh exchanges. SR1 6729-30, 6735-38.

U S WEST is a Colorado corporation providing telecommunications services throughout South Dakota. TLFF1 1, App.1 at p. 3; MOFF1 1, App. 2 at p. 10; MCFF1 1, App. 3 at p. 17. The Commission approved the sale of 63 out of 67 U S WEST exchanges.²

The Timber Lake exchange is located within the boundaries of the Cheyenne River and Standing Rock Indian Reservations. TLFF1 11, App. 1 at p. 5. The McIntosh and Morrystown exchanges are located within the boundaries of the Standing Rock Indian Reservation. MCFF1 11, App. 3 at p. 19; MOFF1 11, App. 2 at p. 12. The Commission initially denied the sales of the Timber Lake, Morrystown and McIntosh telephone exchanges by U S WEST to the Telephone Authority in 1995. App. 1 at p. 7; App. 2 at p. 14; App. 3 at p. 21. The Commission gave four reasons: 1) the Telephone Authority, a tribally-chartered organization, refused to

²The only other sale the Commission did not approve was the sale of the Alcester exchange to Beresford Municipal Telephone Company. See Decision and Order Regarding Sale of the Alcester Exchange at 6 (conclusion of law 4), No. TC94-122-Alcester (August 1, 1995), SR1 10,467-74. No appeal was taken from the Alcester decision. Thus, these three sales are the only sales not approved by the Commission that have been contested.

waive its sovereign immunity; 2) because the Telephone Authority enjoys sovereign immunity, the State cannot enforce the collection of gross receipts and sales taxes from the Telephone Authority; 3) the Commission would lose regulatory authority over the exchanges after the sales; and 4) approval of the sales would result in an improper delegation of the Commission's authority. MCFF1 12, 16, 17, MCCL1 3, 5, App. 3 at pp. 19, 21; TLFF1 12, 16, 17, TLCL1 3, 5, App. 1 at pp. 5, 7; MOFF1 12, 16, 17, MOCL1 3, 5, App. 2 at pp. 12, 14.

U S WEST and the Telephone Authority appealed the Commission's decisions to the Circuit Court arguing that the Commission lacked jurisdiction under federal law because of both its infringement on tribal self-government and preemption. On February 21, 1997, the Circuit Court held that the Commission had jurisdiction over the exchange sales. App. 4 at p. 61. The Circuit Court, however, reversed and remanded the Commission's denial of the exchange sales for: 1) erroneously basing the denial on the Telephone Authority's refusal to waive sovereign immunity; 2) wrongly concluding that SDCL 49-1-17 prohibited approval of the sales; and 3) failing to enter findings of fact on each of the statutory factors listed in SDCL 49-31-59. App. 4 at p. 62.

On remand, counsel for the Commission moved that the Commission decide the remanded issues on the record already

before the Commission. SR2 5-7. The Telephone Authority, joined by U S WEST, filed a motion requesting that the Commission reopen the record to consider new evidence. SR2 8-17; SR2 18-20. The Telephone Authority noted the enactment of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.), the election of a new Commissioner, a provisional certificate of convenience and necessity issued by the Standing Rock Sioux Tribe, App. 10 at pp. 97-98, and the Telephone Authority's newly adopted dispute resolution procedures. App. 11 at pp. 99-104.

On May 7, 1997, the Commission denied the Telephone Authority's motion to reopen the record by ordering the parties to submit proposed findings of fact and conclusions of law on the record. SR2 21. On June 2, 1997, U S WEST and the Telephone Authority filed a motion requesting that the Commission take judicial notice of the Telephone Authority's newly adopted dispute resolution mechanism by which subscribers to all of the Telephone Authority's telephone exchanges may seek redress for their complaints, and a provisional certificate of convenience and necessity issued by the Standing Rock Sioux Tribe approving the Telephone Authority's operation of a telecommunications system on the Standing Rock Indian Reservation. SR2 116-24. The Commission staff opposed the judicial notice motion, SR2 126, and the Commission denied it. App. 6 at p. 68; App. 7

at p. 78; App. 8 at p. 88.

For all three exchanges, the Commission ultimately voted to deny the sales because "the sale is not in the public interest" MOCL2 9, App. 6 at p. 74; MCCL2 9, App. 7 at p. 83; TLCL2 9, App. 8 at p. 93. The Commission rejected all of the findings of fact proposed by the parties and entered its own findings of fact on the statutory factors listed in SDCL 49-31-59 for each of the exchanges. TLFF2 26, App. 8 at p. 93; MOFF2 26, App. 6 at p. 72; MCFF2 26, App. 7 at p. 82.

In addressing the statutory criteria, the Commission entered identical findings and conclusions for all three exchanges. With the exception of the payment of taxes, the Commission found that the exchange sales to the Telephone Authority would meet the statutory standards save for the fact that the Commission was "unable to require, as a condition of the sale," that the Telephone Authority comply with the various statutory standards. MOFF2 20, App. 6 at p. 71; MCFF2 20, App. 7 at p. 81; TLFF2 20, App. 8 at p. 91. Additionally, the Telephone Authority "would not recognize the Commission as having regulatory authority" over the exchange in question. See, e.g., MCFF2 18, App. 7 at p. 81; MOFF2 18, App. 6 at p. 71; TLFF2 18, App. 8 at p. 91.³ The

³The various findings of the Commission are confusing because they refer to the Commission's understanding of the Telephone Authority's position on the extent of Commission enforcement and regulatory authority rather than describing the Commission's perspective on the scope of its authority

Commission also held that because "CRSTTA maintains that there is no enforcement mechanism that would require CRSTTA to pay gross receipts taxes, approval of the sale would result in the loss of significant tax revenue"

MOFF2 23, App. 6 at p. 71; TLFF2 23, App. 8 at p. 91; MCFF2 23, App. 7 at p. 81.⁴ The Commission acknowledged the Telephone Authority's willingness to pay the gross receipts taxes on its services to non-Indian customers but relied on the Telephone Authority's statement about enforcement to conclude that tax revenue would be lost. MOFF2 13, 23, App. 6 at pp. 70-71; MCFF2 13, 23, App. 7 at pp. 80-81; TLFF2 13, 23, App. 8 at pp. 90-91.

In sum, the Commission denied the sale of each exchange on the grounds that 1) it could not impose conditions on the sale of the exchange in question, 2) it might lose regulatory authority over the exchanges after the sales, and 3) state tax revenue might decrease because the Telephone Authority enjoys sovereign immunity under federal law.

The Circuit Court affirmed the Commission's findings of fact and conclusions of law from the bench. Transcript of

after the sales. The Commission's findings are also unclear in that they do not distinguish between the sovereign immunity of the Telephone Authority or the general lack of state regulatory authority over on-Reservation affairs of Indian tribes.

⁴Again, the Commission refers to the Telephone Authority's position on the ability of the State to enforce collection rather than stating its own position on whether such taxes may be collected.

Feb. 11, 1998 Oral Argument at 54-61.

B. STATEMENT OF FACTS

Since 1958, the Telephone Authority has owned and operated the Dupree, Eagle Butte, South Dupree, La Plant, and Isabel telephone exchanges, and has provided telecommunications services to both tribal members and non-members. SR1 3270, 3274-75. Even in the absence of its dispute resolution mechanism, the Telephone Authority has satisfactorily resolved the few complaints lodged over the years. SR1 3274-77. In 1958, and again in 1975, the Commission found that, despite its inability to regulate or tax the Telephone Authority, the Telephone Authority's acquisition of the Dupree and Isabel exchanges on the Cheyenne River Indian Reservation was in the public interest. SR1 3270.

The Telephone Authority is uniquely suited to provide telecommunications services in the rural areas encompassed by the Timber Lake, Morrystown and McIntosh telephone exchanges because it has an interest in the economic development of those rural areas. SR1 3280, 3417-19. The Telephone Authority has always been committed to working with the communities within the affected exchanges to provide the telephone services needed to attract new business and to maintain service to existing businesses at competitive rates. SR1 3324-25; TR 776-77.

SDCL 49-31-59, which was effective as of July 1, 1995,

requires that the Commission consider six factors in approving sales of telephone exchanges: (1) the adequacy of local telephone services; (2) the reasonableness of rates for local service; (3) the provision of public safety services; (4) the ability of the local exchange company to provide modern, state-of-the-art telecommunications services; (5) the public interest; and (6) the payment of taxes. Examination of the Commission's findings on these factors reveals that no dispute exists over the Telephone Authority's ability and willingness to provide service at the level which the Legislature sought to protect.

1. Adequacy of Local Telephone Service.

The Telephone Authority has an excellent record of providing satisfactory local telephone service. SR1 3274-77, 6035. Based on the record before it, the Commission acknowledged that the Telephone Authority "currently provides adequate service to its present customers." MOFF2 20, App. 6 at p. 71; TLFF2 20, App. 8 at p. 81; MCFF2, 20, App. 7 at p. 81. Concerned with its own authority, however, the Commission noted that it would not be able as "a condition of sale" to require the Telephone Authority to maintain all existing services or to honor all existing contracts. According to the Commission, "[t]his lack of regulatory control by the Commission combined with the lack of the ability of a subscriber to vote or have a political voice in CRSTTA could negatively affect adequacy of

service." MOFF2 20, App. 6 at p. 71; TLFF2 20, App. 8 at p. 91; MCFF2 20, App. 7 at p. 81.

2. Reasonableness of Rates for Local Service.

The Telephone Authority's purchase of the three exchanges will not affect the local telephone service rates, and the Telephone Authority's rates in these exchanges will remain the same as U S WEST's rates prior to the sale. SR1 3277, 3326, 6038. In fact, the Telephone Authority has only raised its rates once in 20 years. SR1 3277, 3327. The Telephone Authority's feasibility study, conducted by independent accountants, indicated that the cost of coordinating and upgrading equipment will not affect local rates in the acquired exchanges. SR1 3277, 3327-28, 6038-39. The Commission properly noted the Telephone Authority's assurance that it will charge the same rates as U S WEST. It found, however, that "the Commission is unable to require as a condition of sale that CRSTTA not increase current local rates for 18 months . . .", which condition had been imposed upon the other purchasers of U S WEST telephone exchanges approved by the Commission. TLFF2 21, App. 8 at p. 91; MOFF2 21, App. 6 at p. 71; MCFF2 21, App. 7 at p. 81.

3. Provision of Public Safety Services.

The Telephone Authority is committed to providing public safety services, such as 911 and enhanced 911 when the counties take the necessary action to do so. SR1 3277-78, 6102. The Commission found that the Telephone Authority

provides free firebar services but noted that "[i]t currently does not offer 911 or E-911 service because the counties have not yet authorized the collection of taxes for 911." TLFF2 22, App. 8 at p.91 (emphasis added); MOFF2 22, App. 6 at p. 71 (emphasis added); MCFF2 22, App. 7 at p. 81 (emphasis added).⁵

4. Ability of the Local Exchange Company to Provide Modern, State-of-the-Art Telecommunications Services.

The Telephone Authority is willing and able to purchase, operate, maintain, and upgrade facilities of the three telephone exchanges. TR 555-56, 775-77; SR1 3276-86, 3289-90, 6093-96. The Telephone Authority has the ability to obtain capital, has incentives to invest in the acquired exchanges, and has the financial commitments to cover the acquisition costs and any equipment necessary to upgrade the exchanges. SR1 3279-83, 3301, 6083-84. The Telephone Authority has also demonstrated that it has the ability to provide distance learning through interactive video services, tele-medicine, and state-of-the-art telecommunications services. SR1 3278-79, 3289-90, 6095.

Currently, the Telephone Authority provides

⁵The Telephone Authority recently entered into an agreement with Dewey and Ziebach counties in which the counties agreed to the Telephone Authority's imposition of the charge necessary for 911 and enhanced 911 service. The Telephone Authority now provides 911 and enhanced 911 service throughout Dewey and Ziebach counties.

modern, high quality telephone service to approximately 2,500 subscribers, with a fiber optic long distance service, computerized billing service, mobile telephone system, equal access conversion, free firebar service, 100% one-party service and buried cable. SR1 3270-72, 3277-80, 6035. In addition to regular local telephone service, the Telephone Authority also provides cellular telephone service, and extended area service. SR1 3272, 3279-80; TR 682-83. As it has done consistently throughout its business operations, the Telephone Authority will continue to invest in state-of-the-art services in the Timber Lake, Morrystown and McIntosh telephone exchanges. SR1 3278-79, 3324-25. The Telephone Authority intends to provide the following capabilities in all of the exchanges which it operates: 1) distance learning through interactive video service and tele-medicine; and 2) access to the South Dakota Network to provide customer access to current and future technological developments such as the Internet. SR1 3278-79.

Relying on the record before it, the Commission correctly recognized that the Telephone Authority has the ability to provide modern, state-of-the art telecommunications services that will help promote economic development, tele-medicine, and distance learning in rural South Dakota. TLFF2 24, App. 8 at p. 91; MOFF2 24, App. 6 at pp. 71-72; MCFF2 24, App. 7 at p. 81. However, the Commission's concern with its own authority surfaced again

in connection with this factor. The Commission noted that "the Commission is unable to require as a condition of sale that CRSTTA not change any current extended area service arrangements . . . [or] make any improvements necessary for the public safety, convenience, and accommodation as allowed by SDCL 49-31-7." TLFF2 24, App. 8 at p. 91; MOFF2 24, App. 6 at pp. 71-72; MCFF2 24, App. 7 at p. 81.

5. Protection of the Public Interest.

In addressing the public interest, the Commission once more focused on its own continuing authority rather than the ability of the Telephone Authority to provide service at the level which the Legislature sought to protect or the other benefits which might arise from the Telephone Authority's purchase of the exchanges. Notably, the Commission did not find that the Telephone Authority could not -- or would not -- provide service that met the statutory criteria. As is clear from the Commission's other findings, there is no legitimate concern relative to the level of service the Telephone Authority will provide. Thus, the Commission focused solely on the issue of its authority over the sales and exchanges with these findings:

1. Since CRSTTA maintains there is no enforcement mechanism that would require CRSTTA to pay gross receipts taxes, approval of the sale would result in the loss of significant tax revenue for cities, counties, and school districts located within the Morristown [Timber Lake/McIntosh] exchange;
2. The lack of regulatory control by the Commission would mean that the Commission would be unable to

set conditions of sale that must be followed by CRSTTA;

3. The Commission is unable to require as a condition of the sale that CRSTTA offer all existing services currently offered by U S WEST;
4. The Commission is unable to require as a condition of the sale that CRSTTA honor all existing U S WEST contracts and agreements;
5. The lack of regulatory control and the lack of the ability of subscribers [or the majority of subscribers] to vote or have a political voice in CRSTTA could negatively affect adequacy of service;
6. The Commission is unable to require as a condition of the sale that CRSTTA not increase the current local rates for 18 months;
7. The Commission is unable to require as a condition of sale that CRSTTA not change any current extended area service arrangements without prior approval by the Commission; and
8. The Commission is unable to require CRSTTA to make any improvements necessary for the public's safety, convenience, and accommodation as allowed by SDCL 49-31-7.

MOFF2 25, App. 6 at p. 72; TLFF2 25, App. 8 at p. 92; MCFF2 25, App. 7 at p. 82. The Circuit Court affirmed the Commission's findings of fact and conclusions of law.

SCOPE OF REVIEW

Appellants seek review of the Commission's decisions pursuant to SDCL 1-26-36. Findings of fact are reviewed under the clearly erroneous standard, while questions of law are given no deference and are freely reviewable. Permann v. Dep't. of Labor, 411 N.W.2d 113, 115-17 (S.D. 1987). A third standard of review governs those decisions alleged to

be "[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." SDCL 1-26-36 (6).

There are two tests under the abuse of discretion standard. The first is a legal test involving the decision maker's authority. "Questions involving authority require no deference to the decision maker, and are freely reviewable" Iversen v. Wall Bd. of Educ., 522 N.W.2d 188, 193 (S.D. 1994). The second test involves a factual determination. The factual test is "whether [the Court] believe[s] a judicial mind, in view of the law and the *circumstances*, could reasonably have reached that conclusion." Id. at 192 (citing Dacy v. Gors, 471 N.W.2d 576, 580 (S.D. 1991)).

Questions involving jurisdiction are questions of law which are freely reviewable. Devitt v. Hayes, 1996 SD 71, 551 N.W.2d 298; State v. Vandermay, 478 N.W.2d 289, 290 (S.D. 1991).

With the exception of issue four, all of the issues in this case involve questions of law and are freely reviewable. Issue four is reviewed under the abuse of discretion standard.

On appeal, this Court makes the same review of the administrative agency's decision as did the Circuit Court, and is unaided by any presumption that the Circuit Court's decision was correct. Thomas v. Custer State Hosp., 511

N.W.2d 576 (S.D. 1994); In re Templeton, 403 N.W.2d 398 (S.D. 1987).

ARGUMENT

I. THE COMMISSION LACKED JURISDICTION OVER THE SALE OF THE ON-RESERVATION PORTION OF THE TIMBER LAKE EXCHANGE

The State has no authority over a business transaction between the Telephone Authority and U S WEST regarding the portion of the Timber Lake exchange located on the Cheyenne River Indian Reservation because the transaction has been approved by and is under the governmental oversight of the Tribe. As the Eighth Circuit Court of Appeals held nearly a century ago:

The authority of the [Tribe] to prescribe the terms upon which noncitizens may transact business within its borders did not have its origin in act of Congress, treaty, or agreement of the United States. It was one of the inherent and essential attributes of its original sovereignty. It was a natural right of that people, indispensable to its autonomy as a distinct tribe or nation, and it must remain an attribute of its government until by the agreement of the nation itself or by the superior power of the republic it is taken away from it.

Buster v. Wright, 135 F. 947, 950 (8th Cir. 1905), appeal dismissed, 203 U.S. 599 (1906). The Commission's exercise of authority infringes directly on the Tribe's self-governance, and is preempted by federal law because of the strong federal interest in the economic development and self-government by Indian tribes. "The two barriers are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable to

activity undertaken on the reservation or by tribal members." White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 142-43 (1980) (citations omitted). The fact that the Commission and the Tribe have divided regulatory authority over the Timber Lake exchange is no more problematic than the division of authority for exchanges crossing state lines.

A. THE COMMISSION INFRINGED ON THE RIGHT OF TRIBAL SELF-GOVERNMENT BY ASSERTING JURISDICTION OVER THE SALE OF THE ON-RESERVATION PORTION OF THE TIMBER LAKE EXCHANGE.

The Tribe's approval of the on-Reservation sale of the Timber Lake exchange to the Telephone Authority was an exercise of tribal self-governance. The Commission does not have authority to regulate the business activities of the Telephone Authority within the boundaries of the Cheyenne River Indian Reservation because to do so would infringe upon such tribal self-governance. Williams v. Lee, 358 U.S. 217, 220 (1959); McClanahan v. Arizona Tax Comm'n, 411 U.S. 164, 173-77 (1973); Fisher v. District Court, 424 U.S. 382, 386 (1976); App. 4 at 33. Instead, the tribe has jurisdiction over U S WEST's on-Reservation activities by reason, inter alia, of the consensual, contractual relationship between them regarding the sale of the Timber Lake exchange. Montana v. United States, 450 U.S. 544, 565-66 (1981). Accord Duro v. Reina, 495 U.S. 676, 687 (1990) (dictum); South Dakota v. Bourland, 508 U.S. 679, 695 (1993) (dictum); Strate v. A-1 Contractors, 117 S.Ct. 1404,

1409-1410 (1997) (dictum).

In New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983), New Mexico sought to apply its hunting and fishing laws concurrently with the Tribe to nonmembers hunting and fishing within the Mescalero Reservation despite conflicts with tribal hunting and fishing laws. Id. at 329. The state Department of Game and Fish had enforced the state's laws by arresting non-Indian hunters for illegal possession of game killed on the reservation. The Court, noting that the Tribe's hunting and fishing business "clearly involves 'value generated on the reservation by activities involving the Trib[e],'" id. at 341 (citation omitted), concluded that New Mexico's assertion of authority over non-member hunters would "effectively nullify the Tribe's unquestioned authority to regulate the use of its resources by members and nonmembers, [and] interfere with the comprehensive tribal regulatory scheme" Id. at 343-44.

Indeed, even in the most highly regulated industries -- in particular gambling -- states may not interfere with tribal self-governance and self-determination. This is true even under 18 U.S.C. § 162, 28 U.S.C. § 1360 (collectively "Pub. L. 280") where certain states have civil and criminal jurisdiction within Indian reservations. See Bryan v. Itasca County, 426 U.S. 373, 388-90 (1976). In California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987), the Court held that California, a Pub. L. 280 state, could not

apply its laws within an Indian reservation to prohibit gaming. The Court deemed the revenues generated by the tribe's gambling business to serve both tribal members and nonmembers to be value generated on the Reservation and therefore protectable under the infringement doctrine. Id. at 218-20. Given the strong federal interest in tribal self-governance and self-determination, the Court rejected California's attempt to prohibit on-reservation gaming:

We conclude that the State's interest in preventing the infiltration of the tribal bingo enterprises by organized crime does not justify state regulation of the tribal bingo enterprises in light of the compelling federal and tribal interests supporting them. State regulation would impermissibly infringe on tribal government, and this conclusion applies equally to the county's attempted regulation of the Cabazon card club.

Id. at 221-22. See also Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, 492 U.S. 408, 465-66 (1989) (concurring and dissenting opinion); Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134, 156-57 (1980).

The Tribe has jurisdiction which it has exercised over the sale of the on-Reservation portion of the Timber Lake exchange by reason of the contract of sale the Telephone Authority entered into with U S WEST. The telephone business constitutes "value generated on the reservation" just as the gambling business did in Cabazon, and the hunting and fishing business did in New Mexico. The Commission's assertion of authority over the on-Reservation